

ORDER NO. 3470

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Contract 169 (MC2016-43)
Negotiated Service Agreement

Docket No. CP2016-52

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued August 15, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 169, August 4, 2016 (Notice). The Amendment is an attachment to the Notice (Amendment).

In Order No. 3073, the Commission approved the Priority Mail Contract 169 negotiated service agreement (Existing Agreement).²

On August 4, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On August 5, 2016, the Commission issued a notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the amended prices comply with 39 U.S.C. § 3633. *Id.* Attachment B at 1.

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the existing and amended financial models filed under seal. PR Comments at 3. Based on that review, he expresses concern that the Existing Agreement, as amended, may not satisfy 39 U.S.C. § 3633(a). *Id.* He urges the Commission to carefully investigate the Amendment and assess whether these changes will allow the Postal Service to satisfy section 3633(a). *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the materials filed under seal, and the comments filed by the Public Representative.

² See Docket Nos. MC2016-43 and CP2016-52, Order Adding Priority Mail Contract 169 to the Competitive Product List, February 12, 2016 (Order No. 3073).

³ Docket No. CP2016-50, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, August 5, 2016.

⁴ Public Representative Comments on Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 169, August 11, 2016 (PR Comments).

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment increases the negotiated prices of the Existing Agreement. The Public Representative is concerned that the Existing Agreement, as amended, may not satisfy 39 U.S.C. § 3633(a). PR Comments at 3. The supporting financial materials, filed under seal, project that the Existing Agreement, as amended, should comply with 39 U.S.C. 3633(a). The supporting financial materials contain more of the Existing Agreement's actual data than the previously filed model.

As a result, the Commission finds that the Existing Agreement, as amended, is an improvement and should cover its attributable costs moving forward. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section II of the Existing Agreement, as amended, should allow the amended agreement's revenue to cover costs for the duration of its term.

The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs. The Public Representative's concern is also mitigated by the Order No. 3073

requirements, which are still in effect. In particular, the Postal Service must continue to “report contract-specific volumes, disaggregated by weight, costs, and workhours on a quarterly basis for the duration of this contract.” Order No. 3073 at 10. In addition, “[i]f after four quarterly reports, the reports show this contract has not covered its costs, the Postal Service shall negotiate an amendment raising prices to cover costs or terminate this contract in accordance with Article IV of the contract.” *Id.*

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire three years after the initial effective date unless, among other things, either party terminates the contract with 30 days’ written notice to the other party or it is renewed by mutual agreement.⁵

The Amendment does not modify the Existing Agreement’s provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing Agreement expiring.⁶

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

⁵ Order No. 3073 at 11. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission’s implementing regulations of 39 C.F.R. part 3015.

⁶ *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract’s “within at least seven (7) days of the contract expiring.” See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman’s Information Request No. 1, July 1, 2013, question 2.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 169 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary